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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13 Plaintiffs,

14 vs.

15 David Allen Harbour,
16 Defendant.
17

CR-19-00898-PHX-DLR (DMF)

**NOTICE OF CONFESSIONS,
ADMISSIONS, AND STATEMENTS**

18 Notice is hereby given, pursuant to Fed. R. Crim. P. 16(a)(1)(a) and L.R. Crim. P.
19 16.1, that the confessions, admissions, and statements contained in the disclosure provided
20 in this case (and/or contained in any supplemental disclosure provided before trial) will be
21 introduced into evidence by the government at the trial in this matter. *United States v.*
22 *Hall*, 742 F.2d 1153, 1156 (9th Cir. 1984); *United States v. Long*, 455 F.2d 962, 963 (9th
23 Cir. 1972).

24 Those confessions, admissions, and statements may include, but are not limited
25 to, the following:

26 1. Any non-hearsay statements made by Defendant Harbour during the under-
27 oath examination administered by the Federal Trade Commission ("FTC") on April 7,
28 2015, and the Securities Exchange Commission on January 10, 2017. In addition, any non-

1 hearsay statements in the under oath-depositions made in *Wilson v. Wilson* on April 17,
 2 2019, and *Sandford v. Harbour* on July 23, 2019. The transcripts of these depositions have
 3 been disclosed to the defendant and/or are not within the Government's exclusive
 4 possession or control,¹ or were already in the possession of Defendant or his attorneys
 5 before the indictment in this case.

6 2. Any non-hearsay statements made by Defendant Harbour, in a non-custodial
 7 setting, to FBI Special Agent Jeremy Denhoff on May 9, 2016. The report of this interview
 8 ("FBI 302") has already been disclosed to the defendant.

9 Respectfully submitted this 20th day of December, 2022.

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 11 GARY M. RESTAINO
 12 United States Attorney
 13 District of Arizona

14 s/Kevin M. Rapp
 15 KEVIN M. RAPP
 16 COLEEN SCHOCH
 17 Assistant U.S. Attorneys
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21 ¹ As a technical matter, the United States does not believe it is legally required to provide
 22 notice of its intention to introduce statements from the defendant's under-oath
 23 examinations or depositions. Rule 16(a)(1)(A) applies only to statements made "in
 24 response to interrogation by a person the defendant knew was a government agent," and
 25 the FTC and SEC under-oath examinations do not qualify as "interrogation." *Cf. United*
 26 *States v. Stall*, 726 F.2d 584, 587-88 (9th Cir. 1984) ("The government did not violate Fed.
 27 R. Crim. P. 16(a)(1)(A) by failing to inform Von Stoll of oral statements made by him to
 28 IRS Agent Beyer. The rule is specifically limited to statements made by a defendant 'in
 response to interrogation. . . .' Because Von Stoll's statements were . . . not in response to
 interrogation, we need not decide whether he was prejudiced by the failure to disclose
 them."'). Nevertheless, the United States has included the FTC and SEC examinations, and
 depositions in two civil cases, in this notice in an abundance of caution.

CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrant:

Stephen M Dichter, *Attorney for Defendant*

s/Daniel Parke
U.S. Attorney's Office